IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPEAL NO. 50 OF 2003.

Mr. Yutaka Koeda,
son of Mr. Kazutoyo Koeda,
of full age,
Japanese National,
Passport No.MQ-5211129,
resident of Shizuoka-Japan. ... Appellant.
Presently in the Central Jail,
Aguada, Goa.

VERSUS

State of Goa
(represented by
Public Prosecutor). ... Respondent.

Mr. Gopal M. Kanekar, Advocate for the Appellant.

Mr. S.N. Sardessai, Public Prosecutor for the State/ Respondent.

CORAM: P.V. HARDAS, J.

DATE: 11TH MARCH, 2004.

ORAL JUDGMENT;

The appellant has filed the present appeal challenging the Judgment of the learned Special Judge, N.D.P.S. Court, Mapusa dated 19th July, 2003 convicting the appellant for an offence punishable under Section 20(b)(ii) of N.D.P.S. Act read with Section 20(b)(ii)(B) of N.D.P.S. Act and sentencing the appellant to undergo rigorous imprisonment for 5 years and to pay fine of Rs.50,000/- with default stipulation to undergo further imprisonment for six

months in the event of non-payment of fine.

2. The facts in brief as are necessary for the decision of the appeal are stated hereunder :-

P.W.4 P.S.I. Mardolkar was attached to the Anti Narcotic Cell, Panaji, Goa in January, 2001. On 21.1.2001 he received specific and reliable information, through his sources, that one Japanese person, thin in built, aged about 25 years, fair complexion, would come to deliver the consignment of charas at Nine Bar and Restaurant between 7.00 to 8.00 p.m. The said information was reduced to writing and a copy of the same was personally handed over to P.W.5 Dy.S.P. Finton D'Souza. Exh.31 Colly. is a copy received by P.W.5. Thereafter the presence of two panchas was secured. The panchas are P.W.3 Kirti Narse and one Mahendra Naik. Both the panchas were apprised about the information received by P.W.4 P.S.I.Mardolkar. On the panchas agreeing to act as panch witnesses, they were introduced to the members of the raiding party which consisted of P.W.5 Dy.S.P. Finton D'Souza and other police officers. At about 5.30 the members of the raiding party left the police station and proceeded to Nine Bar and Restaurant. P.W.4 P.S.I. Mardolkar carried with him the seal of Anti Narcotic Cell, Panaji, Goa. One Police Constable

carried with him the kit box containing weighing scale, digital scale, wax, envelopes and other material required for the raid. At 6,15 hrs. they reached the Nine Bar and Restaurant and parked their vehicle at a distance of 100 metres from the Bar and concealed themselves. At about 6.45 hrs. they espied a person coming towards the Nine Bar and Restaurant whose description tallied with the description already received. The said person was therefore surrounded and was asked his name. The said person has been identified in the trial as the accused. The panchas and members of the raiding party were introduced to him. He was informed that he had a right of being searched either before a Gazetted Officer or Magistrate. He was also informed that he had a right to search the members of the raiding party. However, the said person/accused declined to exercise both the rights. On personal search of the pouch worn at the waist, revealed black colour pieces of different shapes and sizes individually wrapped in transparent cellophane papers. On opening some of the cellophane wrappers, P.W.2 opined it was charas. The said substance was weighed and weighed about 533 gms. The substance was thereafter wrapped and sealed with the seal of Anti Narcotic Cell, Panaji, Goa. Signatures of the accused, panchas and P.W.4 Mardolkar were obtained. On his personal search other articles

including some currency notes came to be seized. The entire panchanama of the sequence of events was drawn. The Panchanama is at Exh.13. The accused was apprised of the grounds and was arrested. After returning to the Police Station a complaint was lodged by P.W.4 P.S.I. Mardolkar at Exh.28. The attached muddemal was handed over to P.S.I. Uday Naik along with the covering letter at Exh.29. Intimation under Section 57 was sent which is at Exh.30. The seized contraband was sent to the Food and Drugs Administration for analysis through the C.I.D. Crime Branch. The said drugs were received by P.W.2 Shetgaonkar along with the covering letter at Exh.9. He has acknowledged the receipt of the same on the letter. The contraband was analysed by P.W.1 Mahesh Kaissare who, by his report at Exh.7 opined the same to be charas.

Further to the completion of the investigation a charge sheet against the present appellant came to be filed. The learned Special Judge, N.D.P.S. Court vide Exh.3 filed a charge sheet against the appellant. The Appellant denied his guilt and claimed to be tried. Prosecution in support of its case examined six witnesses. The learned Trial Court on appreciation of the evidence of the prosecution found the accused guilty and convicted and sentenced him as above.

3. Mr. Kanekar, appearing on behalf of the appellant, has stated that he does not wish to challenge the conviction recorded against the appellant. However, he states that the sentence of imprisonment of five years is extremely harsh in view of:- (i) The appellant is a young person and a Japanese National; (ii) The appellant was found in possession of a quantity which was more than the small quantity, but less than the commercial quantity; (iii) The appellant has aged parents to support and is the sole bread earner of the family; and (iv) Recently the father of the appellant suffered a severe stroke and the mother of the appellant is rendered bedridden.

4. Mr. Sardessai, the learned Public Prosecutor, appearing on behalf of the State, has urged that the sentence awarded by the learned Trial Court does not need to be interfered with.

5. The learned Trial Court found the accused guilty and thereafter heard him on the point of sentence. At paragraph 3 of internal page 24 of the judgment, the learned Trial Court has found that there were no previous convictions to the discredit the appellant. Taking those factors into consideration, the learned Trial Court awarded the sentence of five

years. Mr. Kanekar has produced certain documents namely Fax message from the Consulate of Japan which refers to the sickness of the parents of the appellant. Mr. Kanekar further states that the appellant has undergone one year and five months imprisonment and the appellant may be released on the imprisonment already undergone by enhancing the fine.

6. I have given my anxious consideration to the submissions on behalf of the appellant and for the reasons disclosed by the learned counsel for the appellant, particularly the fact that the father of the appellant, post conviction, has suffered with a severe stroke and the mother of the appellant is bedridden, according to me, the appellant deserves to be released on the period of imprisonment already undergone. However, the fine of Rs.50,000/- is enhanced to Rs. 1,00,000/-.

7. Accordingly, Criminal Appeal is partly allowed. The imprisonment of five years is reduced to the period of imprisonment already undergone and fine of Rs.50,000/- is enhanced to Rs. 1,00,000/-. The default sentence of simple imprisonment for six months for non-payment of fine is maintained. Since the

accused is reported to be in jail, he be released forthwith on payment of fine, if not wanted in any other case.

P.V. HARDAS, J.

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